

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DONNA M. CARR,

Plaintiff,

v.

FINGER LAKES FOOD SERVICE, INC.,

Defendant.

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ORDER

05-CV-6511L

By order dated December 7, 2005, the above-captioned matter has been referred to the undersigned for the supervision of pre-trial discovery and the hearing and disposition of all non-dispositive motions, pursuant to 28 U.S.C. §§ 636(b)(A) and (B). (Docket # 7). Currently before the Court is plaintiff's *pro se* motion for an order compelling the production of video surveillance tapes for the night of October 23, 2004. (Docket # 11).

Rule 37 of the Federal Rules of Civil Procedure permits a party to move the court for an order compelling disclosure or discovery if the opposing party fails to provide such discovery upon request. Fed. R. Civ. P. 37(a)(2)(B). The Rule requires that any motion to compel "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action." Fed. R. Civ. P. 37(a)(2)(B).

In this matter, plaintiff's motion fails to indicate whether plaintiff, before filing this motion, conferred with opposing counsel in an effort to obtain the video tapes in question without court action. Indeed, upon inquiry by the Court, plaintiff advised that she had not

requested the discovery materials from defendant. Accordingly, plaintiff's motion to compel  
**(Docket # 11) is DENIED without prejudice.**

**IT IS SO ORDERED.**

*s/Marian W. Payson*

MARIAN W. PAYSON  
United States Magistrate Judge

Dated: Rochester, New York  
March 10, 2006.